

ENTERED

September 30, 2021

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

ELVYN GUERRERO,

Plaintiff.

VS.

MAMBO SEAFOOD, *et al.*,

Defendants.

§
§
§
§
§
§
§
§

CIVIL ACTION NO. 4:19-cv-03059

**ORDER ADOPTING MAGISTRATE JUDGE'S
MEMORANDUM AND RECOMMENDATION**

On June 4, 2021, and June 7, 2021, Defendants' Motion to Dismiss and for Summary Judgment and Defendants' Objections to Plaintiff's Exhibits Submitted in Opposition to Defendants' Motion for Summary Judgment (Dkts. 71, 84) were referred to United States Magistrate Judge Andrew M. Edison under 28 U.S.C. § 636(b)(1)(B). Dkts. 98, 100. Judge Edison filed a Memorandum and Recommendation on September 3, 2021, recommending that that: (1) Section II.F. of Judge Atlas's August 27, 2020 ruling (Dkt. 53) be, respectfully, **OVERRULED** and **SET ASIDE**; (2) Defendants' Motion to Dismiss and for Summary Judgment (Dkt. 71) be **DENIED** without prejudice to refile; and (3) Defendants' Objections to Plaintiff's Exhibits Submitted in Opposition to Defendants' Motion for Summary Judgment (Dkt. 84) be **OVERRULED** as moot. *See* Dkt. 103.

On September 17, 2021, Defendants filed their Objections. In accordance with 28 U.S.C. § 636(b)(1)(C), this Court is required to "make a de novo determination of those portions of the [magistrate judge's] report or specified proposed findings or recommendations to which objection [has been] made." After conducting this de novo


review, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” *Id.*; *see also* FED. R. CIV. P. 72(b)(3).

The Court has carefully considered the Objections; the Memorandum and Recommendation; the pleadings; and the record. The Court **ACCEPTS** Judge Edison’s Memorandum and Recommendation and **ADOPTS** it as the opinion of the Court. It is therefore **ORDERED** that:

- (1) Judge Edison’s Memorandum and Recommendation (Dkt. 103) is **APPROVED AND ADOPTED** in its entirety as the holding of the Court;
- (2) Section II.F. of Judge Atlas’s August 27, 2020 ruling (Dkt. 53) is **OVERRULED** and **SET ASIDE**;
- (3) Defendants’ Motion to Dismiss and for Summary Judgment (Dkt. 71) is **DENIED** without prejudice to refiling; and
- (4) Defendants’ Objections to Plaintiff’s Exhibits Submitted in Opposition to Defendants’ Motion for Summary Judgment (Dkt. 84) is **OVERRULED** as moot.

It is so **ORDERED**.

SIGNED at Houston, Texas, this 30th day of September, 2021.



GEORGE C. HANKS, JR.
UNITED STATES DISTRICT JUDGE